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In the Supreme Court of the United States

ABIGAIL NOEL FISHER, PETITIONER

v.

UNIVERSITY OF TEXAS AT AUSTIN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNIVERSITY OF MICHIGAN AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

TIMOTHY G. LYNCH
Vice President & General Counsel
MAYA R. KOBERSY
Associate General Counsel
UNIVERSITY OF MICHIGAN
503 Thompson Street
Ann Arbor, MI 48109

JOHN P. ELWOOD
Counsel of Record
VINSON & ELKINS LLP
2200 Pennsylvania Ave., NW, Suite 500 West
Washington, DC 20037
(202) 639-6500
jelwood@velaw.com

GREGORY F. MILLER
VINSON & ELKINS LLP
1001 Fannin Street, Suite 2500
Houston, TX 77002
(713) 758-2222

Attorneys for Amicus Curiae

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INTEREST OF *AMICUS CURIAE*[1]

Established in 1817, the University of Michigan ("the University" or "U-M") is a world-class research institution known for academic excellence, community leadership, and the diversity of its students, faculty, staff, and alumni. The University enrolls more than 61,000 students across 3 campuses and 28 schools and colleges; its students come from all 50 states and 114 countries. During the 2014-2015 academic year alone, Michigan awarded nearly 16,000 undergraduate, graduate, and professional degrees. U-M's faculty is considered one of the top five in the country. U-M has produced and served as the scholarly home for pathbreaking researchers, MacArthur Fellows, a Fields Medal winner, astronauts, Pulitzer Prize winners, Nobel Laureates, internationally acclaimed performing artists and composers, a President, three Supreme Court Justices, best-selling novelists, artists, college presidents, military and business leaders, Rhodes Scholars, and filmmakers. The University is world renowned for the strength of its programs; thus, more than 100 U-M graduate programs are ranked in the top ten nationwide.[2]

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[1] No counsel for a party authored this brief in whole or part, and no counsel or party made a monetary contribution to fund the preparation or submission of this brief. No person other than the *amicus curiae*, its members, and its counsel made any monetary contribution to its preparation and submission. The parties have consented to this filing.

[2] Kim Broekhuizen, *U-M remains strong in rankings by U.S. News & World Report*, The Univ. Record Online, Sept. 9, 2015, https://goo.gl/4tMdRM.

The University seeks students from diverse socioeconomic, cultural, religious, global, political, and academic backgrounds—from first-generation students to Native Americans to international students from Albania to Zimbabwe—for one crucial reason: Decades of experience, confirmed by overwhelming empirical research, have persuaded the University of the compelling educational benefits of maintaining a broadly diverse student body. As University President Mark Schlissel has stated, "our dedication to academic excellence for the public good is inseparable from our commitment to diversity, equity, and inclusion. We cannot be excellent without being diverse in the broadest sense of that word."[3]

To that end, the University for years considered many different diversity factors, including race, in its individualized consideration of applicants. In *Grutter* v. *Bollinger*, 539 U.S. 306 (2003), this Court held that obtaining the educational benefits of "student body diversity is a compelling state interest," *id.* at 325. The Court upheld the constitutionality of the University of Michigan Law School's admissions policy, which considered "race as one factor among many" as part of a "highly individualized, holistic review of each applicant's file, giving serious consideration to

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[3] Univ. of Mich., *Diversity, Equity & Inclusion: Proposal 2 FAQs*, http://goo.gl/nuFgVr (last visited Oct. 23, 2015); accord Univ. of Mich., *Statement of President Mary Sue Coleman* (Dec. 6, 2006) http://goo.gl/24PDHi ("Diversity is an essential component of our excellence. The quality of our academic programs is enhanced by the rich and varied contributions of students and faculty who approach problems from different perspectives. * * * The University of Michigan's academic quality will suffer if we cannot recruit and retain faculty, staff and students from a wide range of backgrounds.").

all the ways an applicant might contribute to a diverse educational environment." *Id.* at 337, 340. When this Court held that awarding points to every underrepresented minority applicant to the University's College of Literature, Science and the Arts was "not narrowly tailored to achieve" the University's compelling "interest in educational diversity," *Gratz* v. *Bollinger*, 539 U.S. 244, 270 (2003), the University immediately brought its admissions programs into compliance by adopting a holistic and individualized program consistent with *Grutter*. See *New U-M undergraduate admissions process to involve more information, individual review*, Univ. of Mich. News, Aug. 26, 2003, http://goo.gl/VTfTXH.

In November 2006, Michigan voters approved Proposal 2, an amendment to Michigan's Constitution that (among other things) prohibited all state colleges and universities from "discriminat[ing] against, or grant[ing] preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of * * * public education." Mich. Const. art. I, §26(1). Since the amendment took effect, the University has discontinued even the limited consideration of race in holistic admissions programs that *Grutter* approved. The University continues to believe that maintaining a diverse student body has compelling educational benefits; and, as set forth in greater detail below, since 2006, U-M has made exceptional efforts to attain diversity, broadly defined, without consideration of race. U-M's experience represents an "experiment" in race-neutral admissions this Court may consider in determining whether alternatives are available to institutions of higher education.

U-M's experience demonstrates that the limited consideration of race, as one factor among many in a holistic and individualized admissions program, is necessary to attain the educational benefits of student-body diversity. And when the Court previously considered this case, the University joined an *amicus* brief arguing that the limited consideration of race in admissions was consistent with equal protection principles. See Br. of Leading Public Research Universities as *Amici Curiae*, *Fisher* v. *Univ. of Tex.*, No. 11-345 (Aug. 13, 2012). The University continues to believe that is so.

Because admissions programs for the University's 28 schools and colleges are decentralized, the focus of this brief is the University's undergraduate admissions program, and in particular, admissions to the University's College of Literature, Science, and the Arts ("LSA"). Unless otherwise specified, references below are to the undergraduate admissions program.

SUMMARY OF ARGUMENT

I. Informed by decades of research and teaching experience, the University of Michigan is firmly convinced of the educational benefits of racial diversity as one component of a broadly diverse student body. That view accords with the overwhelming consensus of American universities, which have concluded that racial diversity benefits the exchange and development of ideas by increasing students' variety of perspectives; promotes cross-racial understanding and dispels racial stereotypes; and helps prepare students to be leaders in a global marketplace and increasingly multicultural society. Indeed, it is particularly important that universities have racially diverse stu-

dent bodies today in light of the increasing racial isolation in neighborhoods and in primary and secondary schools. Public universities such as U-M and the University of Texas have a special role and responsibility in this regard, because we receive public funding and represent the training ground for a large number of our Nation's leaders.

Admissions officers should be able to consider race, in a narrowly tailored manner, to be attentive to the distinctive characteristics of individual applicants. "Just as growing up in a particular region or having particular professional experiences is likely to affect an individual's views, so too is one's own, unique experience of being a racial minority in [our] society." *Grutter* v. *Bollinger*, 539 U.S. 306, 333 (2003). To identify promising candidates effectively, admissions officers must be able to consider the fullness of each applicant's background and experience, including socioeconomic profile, challenges overcome, cultural background—and also the applicant's race. Fostering the promise of individualism in admissions sometimes requires, rather than forbids, thoughtful attention to facts about race "to ensure that each applicant is evaluated as an individual," *Fisher* v. *Univ. of Tex.*, 133 S. Ct. 2411, 2418 (2013) (quoting *Grutter*, 539 U.S. at 337).

II. In *Grutter*, and again in *Fisher*, this Court concluded that state universities may lawfully consider race as one factor among many in an individualized admissions program implemented to achieve the compelling state interest in attaining the educational benefits of a diverse student body. See *Fisher*, 133 S. Ct. at 2419 (quoting *Grutter*, 539 U.S. at 328). But, this Court held, the consideration of race in ad-

missions must be narrowly tailored, "involv[ing] a careful judicial inquiry into whether a university could achieve sufficient diversity without using racial classifications." *Id.* at 2420.

For more than a decade, the University of Michigan has been actively engaged in precisely the kind of "serious, good faith consideration of * * * race-neutral alternatives" that *Fisher* and *Grutter* contemplated. See *Fisher*, 133 S. Ct. 2420 (quoting *Grutter*, 539 U.S. at 339-340). Despite persistent and varied efforts to increase student-body racial and ethnic diversity by race-neutral means; despite committed efforts by University faculty, staff, students, and alumni to conduct race-neutral recruiting and admissions programs; and despite admissions consideration and extensive financial aid for socioeconomically disadvantaged students, admission and enrollment of underrepresented minority students have fallen precipitously in many of U-M's schools and colleges since Proposal 2 was enacted. The University's persistent efforts have not been sufficient to create significant opportunities for personal interaction to dispel stereotypes and to ensure that minority students do not feel isolated or that they must act as spokespersons for their race. *Grutter*, 539 U.S. at 318, 319.

Justice Powell wrote, "I can think of no better way to demonstrate [whether] less restrictive alternatives do exist than to re[]ly on the actual experience of these universities." Memorandum from Justice Powell to the Conference at 8, *Regents of Univ. of Cal.* v. *Bakke*, No. 76-811 (Jan. 5, 1978), http://goo.gl/HqFVdX. U-M's nearly decade-long experiment in race-neutral admissions helps to establish that racial diversity in student enrollments, and

the compelling government interest in the resulting educational benefits, cannot be adequately realized at selective institutions without taking race into account as one factor among many in admissions decisions.

ARGUMENT

I. Public Universities Have A Compelling Interest In Attaining The Educational Benefits Of A Racially Diverse Student Body

"In *Grutter*, th[is] Court reaffirmed [the] conclusion that obtaining the educational benefits of 'student body diversity is a compelling state interest that can justify the use of race in university admissions.'" *Fisher*, 133 S. Ct. at 2418 (quoting *Grutter*, 539 U.S. at 325). This Court has recognized that "[t]he academic mission of a university is 'a special concern of the First Amendment.'" *Ibid.* (quoting *Regents of Univ. of Cal.* v. *Bakke*, 438 U.S. 265, 312 (1978)). An integral "[p]art of 'the business of a university [is] to provide that atmosphere which is most conducive to speculation, experiment, and creation,' and this in turn leads to the question of 'who may be admitted to study.'" *Ibid.* (quoting *Sweezy* v. *New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring in judgment)). The determination of how to constitute a university's student body to maximize educational benefits "is, in substantial measure, an academic judgment to which some *** deference is proper under *Grutter*." *Id.* at 2419.

A. Research And Experience Confirm That Racial Diversity Has Compelling Educational Benefits

The University of Michigan is a "firm proponent of the educational value provided by a diverse, multicultural and inclusive campus community." Univ. of Mich., *The Michigan Almanac* 87 (6th ed. 2015), http://goo.gl/iuPFr6. The University "know[s] from research, and from our experience as educators, that building a diverse community adds to the quality of our teaching and learning, our scholarship, and our creative endeavors." Univ. of Mich., *Diversity, Equity & Inclusion: Proposal 2 FAQs*, http://goo.gl/nuFgVr (last visited Oct. 28, 2015).

> Diversity is an essential component of our excellence. The quality of our academic programs is enhanced by the rich and varied contributions of our diverse students and faculty, who approach problems from different perspectives. Many top scholars are attracted to our community because they can study and conduct research with others who challenge their ways of looking at the world. The University of Michigan has become one of the top public universities in the world precisely because it is diverse—and measures such as our graduation rates, scholarly production, rankings of our academic programs and the number of applications for admission are evidence of this success.

Ibid.

The University's views accord with the overwhelming consensus of universities in the United States. More than ninety institutions of higher edu-

cation, and law-school deans representing 171 individual law schools, filed briefs *amicus curiae* in *Grutter* supporting the limited, individualized consideration of race by our Law School to create student-body diversity; and when the Court previously considered this case, over 114 institutions of higher education filed *amicus* briefs in support of the University of Texas's undergraduate admissions policy. See Br. of Am. Bar Ass'n as *Amicus Curiae* 37-38 n.63. That such a wide range of institutions has reached such broad consensus on such a potentially divisive subject is a testament to the breadth of experience confirming the compelling educational benefits of student-body racial diversity. Cf. generally *Fed. Power Comm'n* v. *Fla. Power & Light Co.*, 404 U.S. 453, 463 (1972) ("A court must be reluctant to reverse results supported by such a weight of considered and carefully articulated expert opinion.").

Academic research—including research undertaken by U-M faculty and students—overwhelmingly confirms the educational value of student-body racial diversity. As this Court recognized in *Grutter*, the exchange of ideas and viewpoints "is livelier, more spirited, and simply more enlightening and interesting when the students have the greatest possible variety of backgrounds." *Grutter*, 539 U.S. at 330 (internal quotation marks omitted). Or as U-M President Mark Schlissel recently put it, "diversity helps us arrive at more complex ideas" by providing a greater range of viewpoints. See Univ. of Mich., Office of the President, *Leadership Breakfast: A Dialogue on*

Diversity (Feb. 16, 2015), http://goo.gl/4iB9M0.[4] In addition, it is well recognized that racial diversity promotes "cross-racial understanding, helps break down racial stereotypes, and enables [students] to better understand persons of different races." *Grutter*, 539 U.S. at 330 (internal quotation marks omitted).[5] And perhaps as a consequence, racial diversity helps impart the "skills needed in today's increasingly global marketplace" by "expos[ing] [students] to widely diverse people, cultures, ideas, and viewpoints." *Grutter*, 539 U.S. at 330. A recent "comprehensive, nationally representative study of

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[4] See, *e.g.*, Nicholas Bowman, *College Diversity Experiences and Cognitive Development: A Meta-Analysis*, 80 Rev. Educ. Res. 4, 22 (Mar. 2010) ("the evidence for the cognitive benefits of college diversity experiences is quite strong," including "critical thinking and problem solving"); *id.* at 23 (noting evidence that "classroom diversity is positively associated with gains in general academic skills"); Sylvia Hurtado, Univ. of Mich. Ctr. for the Study of Higher and Postsecondary Ed., *Preparing College Students for a Diverse Democracy: Final Report to the U.S. Dep't of Educ.* (2003).

[5] See, *e.g.*, Uma M. Jayakumar, *Can Higher Education Meet the Needs of an Increasingly Diverse and Global Society? Campus Diversity and Cross-Cultural Workforce Competencies*, 78 Harv. Educ. Rev. 615, 621-622 (2008); *id.* at 621-622, 638, 640; *id.* at 642-643 (in contrast with pre- and post-college experiences, "*collegia[te]* interactions across race is most influential with regard to developing cross-cultural workforce competencies") (emphasis added); Sylvia Hurtado, *Linking Diversity with the Educational and Civil Missions of Higher Education*, 30 Rev. Higher Educ. 185, 191-192 (2007), see also Julie J. Park et al., *Does Socioeconomic Diversity Make a Difference? Examining the Effects of Racial and Socioeconomic Diversity on the Campus Climate for Diversity*, 50 Am. Educ. Res. J. 466, 489-490 (2013) (noting that socioeconomic diversity "is not an adequate replacement for the benefits associated with racial diversity").

U.S. college graduates" concluded that graduates are far more likely to believe their education was beneficial if "they interacted with people from different backgrounds on a regular basis."[6]

It is thus widely recognized that the experience of student-body racial diversity helps in "developing cross-cultural workforce competencies" critical to the country's economic future. See Jayakumar, *supra*, at 642-643; *id.* at 616-617 (reviewing literature). Thus, "higher education institutions in the twenty-first century have a critical role to play in promoting diverse and pluralistic experiences." *Id.* at 637.

Indeed, diversity in higher education is *especially* important today. The nation is becoming increasingly multicultural as the vast majority of the nation's population growth occurs among racial minority groups. Jayakumar, *supra*, at 615. But at the same time, "[m]any students live in racially homogeneous communities prior to college and attend similarly homogeneous high schools," with only "rare opportunit[ies] for students to engage across racial/ethnic lines." Park, *supra*, at 467. For many Americans, then, college represents the *first opportunity* for meaningful interaction with persons of other races. Thus, "college plays a unique role in exposing students to new ideas and perspectives through engagement in a racially diverse student body." *Ibid.*; accord Jayakumar, *supra*, at 615 (noting "neighborhoods and schools are * * * returning to levels of racial segregation not seen since the 1960s"),

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[6] Stephanie Marken, Gallup, *Graduates Exposed to Diversity Believe Degree More Valuable*, Oct. 28, 2015, http://goo.gl/gdiBZT.

616 ("White students in particular tend to have minimal interaction with people of other racial backgrounds before college.").

U-M is particularly mindful of the special role, and responsibility, of public universities. We are publicly supported and frequently founded for the express purpose of educating and training the citizenry to "develop[] leaders and citizens," and thereby to "prepare our students for leadership roles in a wide range of social institutions, including government, politics, law, business and finance."[7] And because public universities are typically more affordable (particularly to in-state students) than many private universities offering a comparable, academically rigorous education, we make the benefits of higher education more widely available. The University of Michigan and other public universities play a prominent role in creating the leaders of tomorrow: nineteen of the twenty schools producing the most law-school applicants are public universities,[8] and "[s]tate universities have become the favorite of companies recruiting new hires."[9] "Public college or university graduates

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[7] Univ. of Mich., *Mission Statement, Vision Statement*, http://goo.gl/tXp0zf (last visited Oct. 25, 2015); see also Univ. of Ill., *Mission & Vision*, https://goo.gl/hXs1Dw (last visited Oct. 27, 2015); Penn State Univ., *Mission and Character*, http://goo.gl/iGOnRy (last visited Oct. 27, 2015); The Ohio State Univ., *The Ohio State University Vision*, https://goo.gl/8nV75t (last visited Oct. 27, 2015).

[8] See Law Sch. Admission Council, *Top 240 ABA Applicant Feeder Schools for Fall Applicants*, http://goo.gl/Pw50FB (last visited Oct. 25, 2015).

[9] Teri Evans, *Penn State Tops Recruiter Rankings: Companies Favor Big State Schools With One-Stop Shopping For Graduates With Necessary Skills*, Wall St. J., Sept. 13, 2010,

are more likely than those who graduated from a private university to strongly agree that they were exposed to people of different backgrounds during their collegiate experience." Marken, *supra* n.6. Public universities also educate vast numbers of students: U-M and Michigan State University together educate nearly as many students as all Ivy League institutions combined. Thus, what this Court said about universities in general is *particularly* true of public universities such as U-M: We "represent the training ground for a large number of our Nation's leaders." *Grutter*, 539 U.S. at 332.

Given the important opportunity that public universities provide, "it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity," and that "all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America." *Grutter*, 539 U.S. at 332-333. Public universities thus have a particular obligation to make sure that road is open to all. As President Schlissel explained, U-M's "role as a public university[] gives us a special obligation to extend the reach of our excellence across the full breadth of our society." *Leadership Breakfast*, *supra*.

B. Consideration Of Race As One Of Many Factors Is Necessary To Evaluate Candidates As Individuals

There is little question that in making admissions decisions, officials at colleges and universities act

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http://goo.gl/XUcFhS; see also *The Top 25 Recruiter Picks*, Wall St. J., Sept. 13, 2010 (providing rankings), http://goo.gl/X2v5sT.

properly when they seek "to ensure that each applicant is evaluated as an individual," *Fisher*, 133 S. Ct. at 2418 (quoting *Grutter*, 539 U.S. at 337)—that is, when they "consider[] the overall individual contribution of each candidate," *id.* at 2416. As this Court has observed, race "still matters." *Grutter*, 539 U.S. at 333; accord *Parents Involved in Cmty. Sch.* v. *Seattle Sch. Dist. No. 1*, 551 U.S. 701, 787 (2007) (Kennedy J., concurring in part and concurring in the judgment) ("The enduring hope is that race should not matter; the reality is that too often it does."). It makes little sense to hold that admissions officers categorically cannot consider race, among all factors that might shed light on a candidate's upbringing, experience, accomplishments, and prospects.

Rather, admissions officers should be able to consider race in some circumstances in order to be attentive to the distinctive characteristics of individual applicants. "Just as growing up in a particular region or having particular professional experiences is likely to affect an individual's views, so too is one's own, unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters." *Grutter*, 539 U.S. at 333. For admissions officers to identify promising candidates, they must be allowed to consider the fullness of each applicant's background and experience, including socioeconomic profile, challenges overcome, cultural background—and also the applicant's race. Common metrics such as test scores, grades, and class rank often fail to fully capture what sort of *individual* the applicant is in terms of talent, industry, grit, and other personal characteristics that make candidates worthy of admission. Fostering the promise of individualism in

admissions therefore sometimes requires, rather than forbids, thoughtful attention to facts about race.

Such consideration is fully consistent with the principles of individualism this Court has established for the consideration of race in admissions. This sort of individualized, holistic consideration, based on the entirety of a candidate's application, is a far cry from "different treatment based on a classification that tells each student he or she is to be defined by race." *Parents Involved*, 551 U.S. at 789 (Kennedy, J., concurring in part and concurring in the judgment). "[E]ach characteristic of a particular applicant [is] to be considered in assessing the applicant's entire application." *Gratz*, 539 U.S. at 2428. "'[E]ach applicant is evaluated as an individual and not in a way that makes an applicant's race or ethnicity the defining feature of his or her application.'" *Fisher*, 133 S. Ct. at 2418 (quoting *Grutter*, 539 U.S. at 337). Every applicant "compete[s] for every seat in the class." *Bakke*, 438 U.S. at 319-320 (opinion of Powell, J.). Holistic consideration of this sort "treats each applicant as an individual in the admissions process," and gives disappointed applicants "no basis to complain of unequal treatment under the Fourteenth Amendment." *Bakke*, 438 U.S. at 318 (opinion of Powell, J.).

II. The University Of Michigan's Race-Neutral Recruiting And Admissions Efforts Have Failed To Yield Racial Diversity In Student Enrollment

As Justice Powell observed, there is "no better way to demonstrate [whether] less restrictive alternatives do exist than to re[]ly on the actual expe-

rience of these universities." Memorandum from Justice Powell to the Conference at 8, *Regents of Univ. of Cal.* v. *Bakke*, No. 76-811 (Jan. 5, 1978), http://goo.gl/HqFVdX.[10] For more than a decade, the University of Michigan has been actively engaged in the kind of "serious, good faith consideration of * * * race-neutral alternatives" that *Fisher* and *Grutter* contemplated. *Fisher*, 133 S. Ct. 2420 (quoting *Grutter*, 539 U.S. at 339-340). Despite persistent and varied efforts to increase student-body racial and ethnic diversity by race-neutral means, admission and enrollment of underrepresented minority students have fallen precipitously in many of U-M's schools and colleges since Proposal 2 was enacted. U-M's experience represents an experiment in race-neutral admissions that this Court may consider in determining whether alternatives are available to the University of Texas or other institutions of higher education. U-M's experience underscores that the limited consideration of race is necessary to obtain the educational benefits of racial diversity.

A. Michigan Has Undertaken Extensive Race-Neutral Efforts To Promote Diversity

To achieve a broadly diverse student body while maintaining the University's commitment to academic excellence, U-M has long pursued means besides considering race in admissions. For example, the University has long given weight in admissions to whether a candidate comes from a socioeconomically disadvantaged background or is the first in the can-

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[10] Justice Powell's *Bakke* papers are available at http://goo.gl/6zZRVt.

didate's family to attend college. See *Gratz*, 539 U.S. at 255, 256-257; Resp. Br. 9, *Gratz* v. *Bollinger*, No. 02-516 (Feb. 2003); Resp. Br. 36, *Grutter* v. *Bollinger*, No. 02-241 (Feb. 2003). The University has long encouraged minority students with competitive academic credentials to apply to U-M, both to maximize the pool of applicants to be considered for admission, and to increase the percentage of those admitted who choose to enroll (the "yield"). The University has conducted year-round recruiting and outreach campaigns to identify and contact talented students, including minority students, from across the country; attended recruiting fairs in areas with substantial minority populations; hosted workshops for high-school counselors; maintained an office in Detroit to recruit local high school students; coordinated campus visits for high school students; enlisted current students and others to contact admitted minority students and encourage them to enroll; and hosted events for admitted students. See *Gratz* Resp. Br. 3.

In the wake of Proposal 2's adoption, the University redoubled its efforts to pursue student-body diversity, including racial and ethnic diversity, through race-neutral means. In late 2006, just weeks after Proposal 2's passage, the University convened a 55-person task force under then-Provost Teresa Sullivan and then-Senior Vice Provost Lester Monts to recommend race-neutral means to foster diversity on campus. The Task Force studied the experience of other state universities, such as those in California, Washington, Texas, and Georgia, that had sought to maintain racial, ethnic, and gender diversity in the wake of legal changes similar to Michigan's Proposal 2. In early 2007, the Task Force delivered a report

setting forth recommendations on how the University could continue to pursue the educational benefits of diversity. See Univ. of Mich., *Diversity Blueprints Final Report* (Mar. 15, 2007), http://goo.gl/lvKpaO.

Since then, the University has adopted or expanded a number of race-neutral programs that seek to address each of the "three steps to the process of bringing any student to the University of Michigan:" (1) "outreach" to potential applicants, (2) "admittance" of applicants, and (3) "conversion, a term used to describe the process of convincing admitted students to enroll." Shoham Geva, *University continues to struggle with minority enrollment*, The Michigan Daily, Oct. 29, 2014, https://goo.gl/bRcQ9z.

1. Outreach and Recruitment. Acting on one Task Force recommendation, the University's first efforts after Proposal 2's adoption concerned outreach and recruitment, "focusing on building pipelines from underserved communities to the University." Geva, *supra*. In 2008, the University established the Center for Educational Outreach ("Center" or "CEO"), which operates a broad range of programs designed to promote academic achievement in Michigan's elementary, middle and high schools, and to promote interest in higher education, with the goal of "stimulat[ing] college participation and success rates, and * * * attract[ing] a well-prepared diverse student body to the University of Michigan."[11] All Michigan schools are eligible to participate; but the Center's principal focus is underserved schools and schools with significant enrollment of underrepresented mi-

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[11] Univ. of Mich., Ctr. for Educ. Outreach, *About CEO*, http://goo.gl/Y8SfoF (last visited Oct. 24, 2015).

norities, because their students are less likely to be prepared for the University, less likely to apply to the University, and—if admitted—more likely to choose to attend another school. The Center's efforts are not directed solely at increasing enrollment of underrepresented minority groups; it also explicitly targets first-generation college students and students from low-income backgrounds or underrepresented geographic areas. CEO, *2014 Annual Report* 2, http://goo.gl/RZf9pO.

The Center's programs involve "hundreds of U-M faculty, staff, and students" reaching out to "thousands of K-12 students, parents, teachers and community members" annually. *2014 Annual Report* 2. Those programs include:

- *College 101*—a three-day residential summer program that introduces high-school students to higher education on the University's campus, preparing students for college and exposing them to academic disciplines and career options;
- *College Corps*—a ten-week academic enrichment and college-awareness program designed to prepare rising ninth- and tenth-grade students at area partner high schools for postsecondary education;
- *Future U*—an academic enrichment program for academically talented middle-school students at partner schools;
- *Maximizing Academic Success*—a partnership with designated middle and high schools to prepare students for postsecondary education;

- *Michigan College Advising Corps*—a program that places recent University graduates as college advisers in underserved high schools to encourage low-income, first-generation, and other underrepresented students to pursue higher education in Michigan;
- *Pillars*—a program to support parents and guardians of students who would be the first in their family to attend college;
- *Watson A. Young Scholarship Program*—a program that provides scholarships to attend University summer academic programs and a variety of other summer educational programs to help prepare students for college and promote interest in education.[12]
- *Wolverine Pathways*—a new initiative that allows middle- and high-school students in designated school districts to apply for a multi-year educational program integrating core English-language arts, math and science curricula and providing support to students and their parents and guardians. Students who successfully complete the program and are ad-

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[12] Univ. of Mich., Ctr. for Educ. Outreach, *CEO Signature Programs*, http://goo.gl/jwqnjx (last visited Oct. 24, 2015); Univ. of Mich., Ctr. for Educ. Outreach, *Summer Programs*, http://goo.gl/liLOSr (last visited Oct. 24, 2015); Deborah Meyers Greene, *Campus Spotlight: The Michigan College Advising Corps is making a difference across Michigan*, http://goo.gl/HAJaGL. See generally *2014 Annual Report* 9-21.

> mitted to U-M will be awarded a four-year, full-tuition scholarship.[13]

CEO also hosts an annual conference that convenes leaders in education and government to work to strengthen pre-college programming and college access.[14]

In addition, the University's schools and colleges support a broad range of multicultural initiatives to make the University a welcoming environment for minority students.[15] While the full scope of U-M's efforts are too extensive to catalogue here, further descriptions are available online.[16]

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[13] *U-M will launch bold new college-prep program at no cost*, Univ. of Mich. News, Oct. 23, 2015, http://goo.gl/13xajw (last visited Oct. 24, 2015).

[14] Univ. of Mich., Ctr. for Educ. Outreach, *Michigan Pre-College and Youth Outreach Conference*, http://goo.gl/iGnol0 (last visited Oct. 24, 2015).

[15] See generally Univ. of Mich., Office of Acad. Multicultural Initiatives, *Programs, News & Events* http://goo.gl/8UMmW8 (last visited Oct. 24, 2015); Univ. of Mich., Office of Multi-Ethnic Student Affairs, *Student Life: Multi-Ethnic Student Affairs*, https://goo.gl/1QxyU0 (last visited Oct. 24, 2015).

[16] The University's graduate and professional schools undertake similar race-neutral outreach, preparatory, and recruitment efforts. The Rackham Graduate School recruits promising undergraduates and provides grant funding to support recruitment efforts, which is particularly important in recruiting socio-economically disadvantaged students. Univ. of Mich., Rackham Graduate School, *Recruitment of Diverse Graduate Students*, http://goo.gl/7VnkCG (last visited Oct. 24, 2015). Rackham also sponsors mentoring and professional development programs to ease the transition to graduate school. Rackham also sponsors summer research programs in both sciences and the humanities to encourage students from cultural, economic, and geographic backgrounds underrepresented in their field of study to conduct

2. Admissions. The University's undergraduate admissions program is broadly representative of University-wide admissions policies. In evaluating undergraduate applications, the University seeks to enroll academically excellent, broadly diverse students who are engaged in extracurricular activities about which they are passionate. To achieve this, the undergraduate admissions program "look[s] at each student as a whole package, a combination of talents, interests, passions, and skills" in an effort to "look beyond grades and test scores to recruit the most dynamic group of students possible."[17]

Recognizing that "there is great variation among our applicants' personal circumstances, home communities, and high schools," the University's "admissions process considers all aspects of [the applicant's] record and experience" and "do[es] not admit applicants solely on the basis of any single criterion." *Ibid.* To increase the likelihood that the University's undergraduate admissions program will have a full pic-

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research and to prepare for graduate school. Univ. of Mich., Rackham Graduate Sch., *Michigan Humanities Emerging Research Scholars Program*, http://goo.gl/GyNdtp (last visited Oct. 24, 2015); Univ. of Mich., Rackham Graduate Sch., *Summer Research Opportunity Program*, http://goo.gl/zwHrL7 (last visited Oct. 24, 2015); Univ. of Mich., Rackham Graduate Sch., *Alliances for Graduate Education and the Professoriate--Programs* http://goo.gl/RgBjrO (last visited Oct. 24, 2015).

See also Univ. of Mich., *Diversity, Equity & Inclusion: Resources & Programs*, http://goo.gl/t1HDk3 (last visited Oct. 28, 2015); Univ. of Mich. Med. Sch., *Diversity*, https://goo.gl/5410gv (last visited Oct. 28, 2015); see also Univ. of Mich., Mich. Law, *Diversity Resources*, https://goo.gl/6xwuEs (last visited Oct. 28, 2015).

[17] Univ. of Mich., Undergraduate Admissions, *Selection Process*, http://goo.gl/sZMjYf (last visited Oct. 28, 2015).

ture of the applicant, each application is read by at least two reviewers. Reviewers consider traditional indicators of academic preparation—grade point average, test scores, class rank, quality of curriculum, recommendations, along with extracurricular activities—in the context of the student's educational environment. *Ibid.*

"Based on the student's essays, letters of recommendation, and extra-curricular experiences, we seek a personal understanding of the student as an individual. What are her/his interests, demonstrated leadership, and talents (i.e., in the arts, sciences, athletics, etc.)?" *Proposal 2 FAQs*, *supra*. To understand the applicant's achievements in context, the application inquires:

> What are the student's life experiences, and how might those contribute to the University community? (i.e., Is s/he first-generation in the family to attend college? Did s/he achieve excellence despite financial and/or other challenges that made academics and/or extra-curricular involvement more difficult?)

Ibid. Because "[v]ariety in life experience and challenges contributes to the diversity on campus that enriches the learning environment for all students," the admissions process gives "consideration * * * to applicants with particular indicators such as coming from a low socioeconomic status school or household,"[18] by considering whether the applicant is "from a geographic area, socioeconomic profile, neighborhood, or

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[18] Univ. of Mich., Undergraduate Admissions, *Consideration of Socioeconomic Status in the Application Review Process*, https://goo.gl/uvMrOU (last visited Oct. 16, 2015).

high school that is currently underrepresented in our student community?" *Proposal 2 FAQs*, *supra*. Because students from such backgrounds can contribute different viewpoints, those factors are considered favorably in the University's individualized, holistic admissions process.

In addition, in recent years, the University has begun accepting fewer early enrollments in an effort to increase student-body diversity. Because experience indicated that underrepresented minority students and lower socioeconomic students tend to submit applications later because of a lack of familiarity with the application process (and with the advantages of early submission), the University began reducing early enrollment so that admissions officers could consider a larger pool of candidates when making their decisions. See Kim Kozlowski, *UM enrolls most diverse freshman class in a decade,* Detroit News, Oct. 13, 2015 (quoting university spokesman Rick Fitzgerald), http://goo.gl/wEOPXG. That change to the admissions process has helped to increase the diversity, broadly defined, of the freshman class. *Ibid.*

3. Conversion and Yield. Many of the University's outreach and recruitment programs also help to persuade admitted students to attend the University. But the University also has taken a number of additional steps to make attendance more attractive to socioeconomically disadvantaged and first-generation collegiates. "The ability of admitted students to attend the [U]niversity without regard to family financial circumstances remains a top objective of the Uni-

versity of Michigan."[19] To that end, for well over a decade, "the [U]niversity has been aggressively cutting costs" to keep tuition as low as possible while "increas[ing] financial aid designed to assist not only low-income but middle-income students."[20] As part of its ongoing efforts to promote socioeconomic diversity, U-M "has a longstanding commitment to provide a package of financial aid that meets the full demonstrated need of in-state students." *The Michigan Almanac* 25; accord *Budget Presentation*, *supra*. Indeed the University has "expand[ed] the commitment * * * to begin to meet the full demonstrated financial need of low-income *out-of-state* undergraduate students" as well. *Budget Presentation*, *supra* (boldface type and italics deleted).

To reach out to socioeconomically disadvantaged students even more effectively, the University recently launched a scholarship that provides four years of full tuition and required fees, the HAIL (High-Achieving Involved Leader) scholarship, to high-achieving, low-income students.[21] And the new "Wolverine Pathways" program will extend four-year full-tuition scholarships to admitted applicants who have successfully completed that program. See pp. 20-21, *supra*. The University also has worked to in-

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[19] Univ. of Mich., Office of the Provost, *Budget Presentation to the Board of Regents* (June 20, 2013), https://goo.gl/NUPrHo (last visited Oct. 24, 2015).

[20] Rick Fitzgerald, *Budget: Lowest tuition increase in 26 years*, The Univ. Record Online, June 21, 2010, http://goo.gl/WkVuJ6 (last visited Oct. 24, 2015).

[21] Univ. of Mich., *U-Michigan will test new approach to reaching high-achieving, low-income students*, Univ. of Mich. News, Aug. 26, 2015, http://goo.gl/CuqpzC (last visited Oct. 24, 2015).

crease the diversity of the class by "mak[ing] underrepresented students more aware of financial help that's available after they're accepted." Kozlowski, *supra*; Fitzgerald, *Budget*, *supra*.[22]

B. The University's Sustained Race-Neutral Initiatives Have Not Achieved Racial Diversity In Student Enrollments

1. The University's race-neutral initiatives have succeeded in increasing the percentage of in-state students who come from socioeconomically disadvantaged backgrounds. Thus, the percentage of the undergraduate student body from families that earn $25,000 a year or less has almost doubled in the last decade, from 5% to 9%.[23] But despite U-M's demon-

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[22] U-M has not attempted to achieve racial diversity by using a "percentage plan," admitting a certain percentage of top graduates from each of the State's high schools. U-M academic units seek students with a wide array of interests and experiences because those are the "students who will contribute the most to the robust exchange of ideas." *Grutter*, 539 U.S. at 324 (internal quotation marks omitted). Admissions policies that consider only percentages would be antithetical to the University's pedagogical goals by focusing on a single criterion (class rank) instead of seeking out students with a broad range of experiences. Moreover, a percentage plan would not yield a racially and ethnically diverse student pool for U-M. In Michigan, the statewide number of majority-minority schools is dwarfed by the number of schools that are heavily white. Hispanics and Native Americans are not a majority in *any* Michigan county or school district, and African-Americans constitute a majority only in the Detroit area. See *Gratz* Resp. Br. at 48-49. Thus, a percentage plan would have minimal or negative effects on racial diversity.

[23] For freshmen, the percentage has *more than* doubled, from 3% to 7%. *The Michigan Almanac* 33; see also *id.* at 92; *id.* at 16 (noting 5% of freshman students at U-M are first-generation college students).

strated commitment to student body diversity, and despite having spent more than a decade successfully enrolling more socioeconomically disadvantaged students, race-neutral admissions policies have led to markedly lower minority enrollment. In 2006—the last admissions year before Proposal 2 took effect—underrepresented minorities made up 12.9% of undergraduates, 13.8% of the professional school population, and 13.14% of the University's total enrollment.[24] The 2014 enrollment figures reflect a downward long-term trend: underrepresented minorities made up only 10.67% of undergraduates, 12.22% of professional students, and 11.52% of the University's total student body.[25] Although 2015 figures suggest some improvement over previous years, those figures are still substantially below 2006 levels: underrepresented minorities represent 11.38% of undergradu-

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[24] See Univ. of Mich., Office of the Registrar, *Ethnicity Reports, Ten Year Enrollment by Ethnicity*, Report 837, 1996-2006, http://goo.gl/nyMyn9. The University calculates figures using black, Hispanic, Native American, and Hawaiian students, and uses the total number of U.S. and permanent-resident alien students (rather than *total* number of students, including foreign students) as the denominator. Racial and ethnic information is not reliably available for foreign students. The percentage of the student body consisting of underrepresented minorities could be lower still if figures were calculated using the total number of students.

[25] In 2010, Federal Integrated Postsecondary Education Data System ("IPEDS") changed categories for race, as well as the federal reporting guidelines, so pre-2010 figures may not be directly comparable. See Inst. of Educ. Sciences, Nat'l Ctr. for Educ. Statistics, *Changes to Race/Ethnicity Reporting to IPEDS*, https://goo.gl/UX012x (last visited Oct. 24, 2015); see also Rick Fitzgerald, *Student enrollment stable, more diverse for fall 2015*, The Univ. Record Online, Oct. 12, 2015, http://goo.gl/L87LFP.

ates and 11.79% of professional students. That represents approximately a 12% reduction since 2006 in underrepresented minorities among the University's undergraduate population, and a 14.5% drop among the professional-school population.

The reductions within individual groups have been still more pronounced. Black undergraduate enrollment was 7.03% in 2006; for the past five years it has ranged between 4.41% and 4.71%, a reduction of more than one-third.[26] This decrease occurred even as the total percentage of college-aged blacks in Michigan *increased* from 16 to 19%. See Ford Fessenden & Josh Keller, *How Minorities Have Fared in States With Affirmative Action Bans,* N.Y. Times, June 30, 2015, http://goo.gl/1bRzti. Native American enrollment plateaued at 1% between 2004 and 2007, and has fallen to around 0.2% from 2010 to 2015.[27]

2. Considering the percentages in isolation fails to recognize the very real impact reductions in racial diversity have on students' educational experience. The lower enrollment levels of underrepresented

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[26] Compare Univ. of Mich., Office of the Registrar, *Undergraduate Enrollment Overview,* 2010, http://goo.gl/4Et1bj (last visited Oct. 24, 2015), with Univ. of Mich., Office of the Registrar, *Undergraduate Enrollment Overview,* 2015, http://goo.gl/Bjj5o8.

[27] By contrast, Hispanic undergraduate enrollment percentages have remained relatively stable; it was 4.89% in 2006, and has ranged between 4.31% and 4.93% in the past 5 years. *Undergraduate Enrollment Overview, 2015,* n.26, *supra.* Those figures may have been affected by the revision of IPEDS classifications in 2010, however, which generally increased the numbers of reported "Hispanic" students because students were reported as "Hispanic" even if they primarily self-identified as another ethnic group. See n.25, *supra.*

minorities significantly reduce the likelihood that students will have meaningful interactions with students of other racial and ethnic groups of the sort that is educationally valuable in dispelling stereotypes and exposing students to new viewpoints. See pp. 9-11, *supra*. Compared to 2006, today there are 697 fewer black students (and 493 fewer black undergraduates) at U-M, and 242 fewer Native Americans;[28] and there are 85 fewer black, 64 fewer Hispanic, and 35 fewer Native American professional students than in 2006.[29] Today there are just 37 blacks and 31 Hispanics among the 1,503 undergraduates in the University's business school.[30]

In some instances, students have very little opportunity to interact with classmates of different races and ethnicities. For example, in 2015, the dental school's 103 first-year professional students include

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[28] Compare Univ. of Mich., Office of the Registrar, *Enrollment by School or College, Ethnicity, and Gender*, Report 816, Fall 2015, http://goo.gl/zsNAxr, with Univ. of Mich., Office of the Registrar, *Enrollment by School or College, Ethnicity, and Gender*, Report 816, Fall 2006, http://goo.gl/jzKqbV; compare Univ. of Mich., Office of the Registrar, *Undergraduate Enrollment by School or College, Level, and Gender*, Report 836U, Fall 2015, http://goo.gl/kn1HZ4, with Univ. of Mich., Office of the Registrar, *Undergraduate Enrollment by School or College, Level, and Gender*, Report 836U, Fall 2006, http://goo.gl/DDJZvO.

[29] Compare Univ. of Mich., Office of the Registrar, *Graduate Enrollment by Ethnicity, Class Level, and Gender with Rackham Students Assigned According to School or College*, Report 836G, Fall 2015, http://goo.gl/UPfWFO, with Univ. of Mich., Office of the Registrar, *Graduate Enrollment by Ethnicity, Class Level, and Gender with Rackham Students Assigned According to School or College*, Report 836G, Fall 2006, http://goo.gl/TocNZx.

[30] *Undergraduate Enrollment by School or College, Level, and Gender*, Report 836U, Fall 2015, n.28, *supra*.

one Hispanic and three black students.[31] In 2014, there was one underrepresented minority freshman in Architecture & Urban Planning, and six of the 151 freshman nursing students were black.[32] In 2013, there was one black female freshman in an engineering class of 742; there were 19 (along with 29 black males) in 2006.[33]

In addition to reducing opportunities for beneficial interaction, the reduction in numbers undermines the educational benefits of racial diversity by promoting a sense of isolation among minority students and thereby reducing the likelihood that they will actively participate. See Geva, *supra* (students suggested "low minority enrollment impacted [students'] experiences at the University"); Kellie Woodhouse, *University of Michigan renews decades-long struggle to increase black enrollment*, mlive.com (Feb. 2, 2014) (because "[t]here are fewer minority students on campus," there is a perception that "it's an increasingly lonely place") (quoting University Regent Mark Bernstein), http://goo.gl/SIA3hj. With only around 5 black or Hispanic students per 100—and with 82% of

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[31] Univ. of Mich., Office of the Registrar, *New and Continuing Graduate and Undergraduate Enrollment by Ethnicity, Gender and School/College*, Report 875, Fall 2015, http://goo.gl/QRSNmE.

[32] Univ. of Mich., Office of the Registrar, *New Freshmen Enrollment by Geographic Location and Ethnicity*, Report 856, Fall 2014, http://goo.gl/fzRBpp.

[33] Univ. of Mich., Office of the Registrar, *Undergraduate Enrollment by School or College, Ethnicity, Class Level, and Gender*, Report 836U, Fall 2013, http://goo.gl/RcqDh8; *Undergraduate Enrollment by School or College, Ethnicity, Class Level, and Gender*, Report 836U, Fall 2006, n.28, *supra*.

U-M classes smaller than 50 students[34]—the odds are that few minorities will be in most classes. See Woodhouse, *supra* ("black students at U-M still say that in many of their classes, there are only a handful of students who look like them"). That affects the educational environment because "there is a relationship between numbers and culture and climate." *Ibid.* (quoting E. Royster Harper, University Vice President for Student Life). Undergraduate students (and underrepresented minorities in particular) increasingly report that they disagree with the statement that students are respected at U-M regardless of their race or ethnicity. *The Michigan Almanac* 93. As is common elsewhere, low numbers of enrolled minority students makes it harder to recruit; "minorities who get in" may "choose not to attend because U-M's environment is perceived as unfriendly toward minorities." Woodhouse, *supra*.

Student dissatisfaction with persistent low black enrollment sparked a social-media campaign on Twitter, known by the hashtag #BBUM ("Being Black at the University of Michigan"), which spurred more than ten thousand posts on its first day alone. Students related "tales of feeling isolated [and] slighted."[35] One common refrain was "being the only

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[34] In 2014, only 7% of classes had more than 100 students. See Univ. of Mich., Undergraduate Admissions, *Average Class Size and Student-to-Faculty Ratio*, https://goo.gl/ta6wHV (last visited Oct. 18, 2015).

[35] Steve Friess, *Diversity at U-M: What's Next?*, http://goo.gl/NDfCuu (reprinted from Michigan Alumnus, Fall 2014); Alyssa Brandon, *University reflects on #BBUM a year after demands*, The Michigan Daily, Jan. 20, 2015, https://goo.gl/A0aKS3.

black student in class" and being called on as "the spokesperson" or "the voice" for the race whenever matters involving blacks arose.[36] The University has made inroads addressing several of the concerns raised during the campaign, and leaders of the campaign have agreed to assist in initiatives designed to increase the "yield" of admitted underrepresented minority applicants by making outreach efforts. But students and administrators agree that significantly increasing the percentage of "[b]lack students on campus has been the most difficult [issue] to address" within the strictures of Proposal 2. Brandon, *supra*.

3. The University of Michigan has concluded that while targeted recruiting and outreach efforts, combined with emphasis on socioeconomic factors in admissions, are helpful in increasing attendance by underrepresented minorities, such measures are not themselves enough to secure the educational benefits of student-body diversity. While U-M's efforts have attempted to expand the cohort of qualified racially and socioeconomically diverse candidates, the overall pool of potential minority applicants with competitive academic qualifications remains very small—both in absolute terms and relative to the number of qualified non-minority and wealthier applicants. See *Gratz* Resp. Br. 4. For example, data available from ACT indicate that of all high school students in Michigan in 2015 with a grade point average of B or

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[36] *Ibid.*; see also Peter Jacobs, *Trending #BBUM Campaign Offers A Stark Look At Being A Minority Student At A Top American University*, Business Insider, Nov. 20, 2013, http://goo.gl/G5RnXu; Julianne Hing, *When a Hashtag Sparks More Than Dialogue*, colorlines.com, Feb. 14, 2014, http://goo.gl/Bq7Djf.

above and ACT composite scores of 26 or above, only 5.44% were African-American, Hispanic, or Native American. See also *Gratz* Resp. Br. 4 (noting Michigan figure in 1999 for B-average and 1200 SAT was 5%). In addition, intense competition with other selective institutions for these highly sought-after students compounds this pool-size problem by depressing the yield. See *ibid.*

While increasing the representation of low-income students remains an important part of the University's goal of increasing campus diversity, it has not succeeded in increasing *racial or ethnic* diversity. That is not surprising: "[T]here are almost six times as many white students as black students who both come from [low socio-economic status] families *and* have test scores that are above the threshold for gaining admission to an academically selective college or university." William G. Bowen & Derek Bok, *The Shape of the River* 51 (2000); see generally *id.* at 46-52. Pursuing socioeconomic diversity is thus not a realistic strategy under which the University could enroll an academically talented class that is diverse in many ways, including with respect to race. See generally Park, *supra*, at 472 ("data indicate that class-based affirmative action would result in substantially lower levels of racial diversity"); *id.* at 490 ("class-based affirmative action does not yield the same amount of racial diversity as race-conscious admissions policies"); *San Francisco NAACP* v. *San Francisco Unified Sch. Dist.*, 413 F. Supp. 2d 1051, 1052, 1058, (N.D. Cal. 2005) (noting "diversity index" that "t[ook] into account socioeconomic status * * * [and] mother's educational background" did "not

achieve[] diversity in any meaningful sense" and "has not and will not produce the benefit of diversity").[37]

Thus, efforts to increase the representation of lower-income students, while worthwhile in their own right for adding "distinctly and uniquely to student experiences with diversity and the behavioral dimension of the campus," Park, *supra*, at 489, simply are not effective in dissipating racial preconceptions and stereotypes. "[M]erely increasing socioeconomic diversity * * * is not an adequate replacement for the benefits associated with racial diversity; all are needed to yield the optimum benefits." *Id.* at 490; see also *ibid.* ("Our findings confirm the importance of recruiting and retaining student bodies that are both racially and socioeconomically diverse, and not one at the exclusion of the other.").

Worse still, to the extent that admissions based on socioeconomic disadvantage brings additional nonwhite students into universities, making those socioeconomically based admissions the sole means of seeking to increase nonwhite enrollment can exacerbate stereotypes rather than alleviating them. Because lower-income students tend to have attended under-resourced high schools and to have had fewer academic opportunities as a result, their comparative

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[37] See also Elena M. Bernal, Alberto F. Cabrera, & Patrick T. Terenzini, *The Relationship Between Race and Socioeconomic Status (SES): Implications for Institutional Research and Admissions Policies* 8-14 (AIR 2000 Annual Forum Paper) (concluding that class-based admissions policies will not maintain or increase racial or ethnic diversity); Richard H. Fallon, Jr., *Affirmative Action Based on Economic Disadvantage*, 43 UCLA L. Rev. 1913, 1947-1948 (1996) (arguing that socioeconomic admissions policies will not produce racial diversity).

lack of academic preparation and any resulting academic difficulties may—in the absence of other well-prepared minority students—*reinforce* stereotypes about racial and ethnic minorities. By contrast, when race can be considered as one of many factors in individualized admissions determinations, a university can attain greater diversity *within* various ethnic groups and thereby expose students to a broader range of perspectives.

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As this Court knows from the programs it reviewed in *Grutter* and *Gratz*, the University of Michigan is firmly convinced of the educational benefits of broad student-body diversity, including racial and ethnic diversity; and it has a longstanding commitment to achieving broad-based diversity across the full range of candidates' characteristics and life experiences. But nearly a decade into the University's experiment with race-neutral admissions, many U-M colleges and schools have experienced a substantial drop in racial and ethnic diversity, despite persistent race-neutral efforts—including extensive efforts to consider socioeconomic status in admission and recruiting. That loss of racial and ethnic diversity undermines the University's efforts to expose students to a broad diversity of perspectives, to dispel racial stereotypes, and to promote broad classroom participation by reducing feelings of racial isolation.

The University's nearly decade-long experiment in race-neutral admissions thus is a cautionary tale that underscores the compelling need for selective universities to be able to consider race as one of many background factors about applicants.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted.

TIMOTHY G. LYNCH
Vice President & General Counsel
MAYA R. KOBERSY
Associate General Counsel
UNIVERSITY OF MICHIGAN
503 Thompson Street
Ann Arbor, MI 48109

JOHN P. ELWOOD
Counsel of Record
VINSON & ELKINS LLP
2200 Pennsylvania Ave., NW, Suite 500 West
Washington, DC 20037
(202) 639-6500
jelwood@velaw.com

GREGORY F. MILLER
VINSON & ELKINS LLP
1001 Fannin Street, Suite 2500
Houston, TX 77002
(713) 758-2222

Counsel for Amicus Curiae the University of Michigan

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